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Supreme Court of the United States

October Term, 1963

119

No. [redacted]

DOROTHY DORSETT BROWN,
Petitioner,

versus

ORLEANS PARISH SCHOOL BOARD,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

EDWARD M. CARMOUCHE,
416 Pioneer Building,
Lake Charles, Louisiana,
SOLOMON S. GOLDMAN,
1320 Saratoga Building,
New Orleans 12, Louisiana,
Attorneys for Petitioner.

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ORLEANS PARISH SCHOOL BOARD,
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Petitioner prays that a writ of certiorari issue to the Supreme Court of Louisiana. The judgment of the Supreme Court of Louisiana has refused review of a final decree permitting the expropriation of certain of petitioner's lands.

OPINIONS BELOW.

The opinion of the Supreme Court of Louisiana is unreported and is attached hereto as Appendix A. The order of the Supreme Court of Louisiana denying in part petitioner's application for review of the judgment

of the Court of Appeal, Fourth Circuit, State of Louisiana, is unreported and is also attached hereto as Appendix B.

The opinion of the Court of Appeal, Fourth Circuit, State of Louisiana is reported at 154 So.2d 545, and is attached hereto as Appendix C.

JURISDICTION.

Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257 (3). The decision of the Supreme Court of Louisiana did not become final until 15 days after rendition, that is, on March 10, 1964.

QUESTION PRESENTED.

The respondent, Orleans Parish School Board, sought to expropriate certain of petitioner's lands. A hearing was had permitting expropriation of fifteen acres, and due compensation to petitioner was thereafter fixed after hearing evidence as to the damages sustained by petitioner. The Appellate Court, at the School Board's request, permitted twenty-five acres to be expropriated, but did not permit any additional trial on the issue of damages caused by the expropriation of the larger area. Is such an expropriation, without a fair opportunity to present evidence as to damages, an unconstitutional deprivation of petitioner's property without due process of law?

LAWS INVOLVED.

Article 14, Section 1 of the Constitution of the United States, which is as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to that person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE.

The Orleans Parish School Board, an agency of the State of Louisiana, brought suit against petitioner to expropriate, for school purposes, a portion of petitioner's property situated in Orleans Parish, Louisiana.

The School Board originally sought to expropriate twenty-five acres of land. A preliminary hearing was held, and it was determined by the Trial Court that only fifteen acres were necessary for the School Board's purposes.

Thereafter, a trial was held on the issue of compensation due petitioner, and judgment was rendered on that issue by the Trial Court.

The School Board appealed to the Court of Appeal, Fourth Circuit, State of Louisiana, and that Court reversed the Trial Court on the question of the area which should be expropriated. The Court of Appeal enlarged the expropriation to twenty-five acres, and fixed the value of the land and the amount of damages to the remainder of petitioner's property occasioned by the taking.

Petitioner, in application for rehearing and in application to the Louisiana Supreme Court for review of the Court of Appeal decision, urged that the case be remanded to the Trial Court so that petitioner could introduce evidence regarding damages occasioned by expropriation of twenty-five acres, since the trial already held was addressed to the question of compensation for a fifteen acre taking.

The Court of Appeal refused a rehearing, without written reasons, and the Louisiana Supreme Court granted a writ of review to petitioner, but limited its review to the question of assessment of the substantial court costs incurred in this case.

The Louisiana Supreme Court rendered judgment on February 28, 1964, reversing the Court of Appeal Fourth Circuit, State of Louisiana, only as to the assessment of court costs. The case thus having become finally adjudicated by the Courts of Louisiana, this application for certiorari is now made to this Court.

REASONS FOR GRANTING THE WRIT.

Petitioner urges the Court to grant this petition for a writ of certiorari to the Supreme Court of Louisiana, for the following reasons:

Petitioner has been denied due process of law by the failure of the Appellate Courts of Louisiana to provide her an opportunity to present evidence regarding damages to the remainder of her property occasioned by this expropriation. The tract from which the property was expropriated contained approximately forty acres. Testimony regarding the usefulness of the remainder of petitioner's property is necessary to show damages, and the usefulness of the pie-shaped piece of land, containing fifteen acres, which now remains, is clearly substantially less than the usefulness of the twenty-five acres which would have remained had the decision of the Trial Court been upheld by the Appellate Courts of Louisiana.

The only evidence petitioner had an opportunity to present was that bearing on the effect of a fifteen acre taking. When the Court of Appeal permitted twenty-five acres to be taken, it undertook to fix damages based on the evidence then in the record. This evidence was inadequate and varied considerably from that which could have been presented had the Court of Appeal remanded the case for trial on the basis of the twenty-five acre taking.

This Court held, in *Walker v. City of Hutchinson*, 77 Supreme Court 200, 352 U. S. 112, 1 L. Ed. 2d 178, that

notice and a fair opportunity to be heard on the question of compensation were requisites to a valid expropriation to a private property.

Expropriation of private property increases as the number and needs of governmental agencies expand. In this case, the landowner successfully questioned, in the Trial Court, the discretion of the governmental agency.

The Court of Appeal upheld that discretion, and in effect penalized the landowner for attacking it by refusing her a proper hearing on the issue of compensation.

Proceedings such as these will make it impossible for a landowner to do anything but quietly submit to the will of the expropriating authority, for, if unsuccessful in the Appellate Courts, the penalty may be partial loss of the landowner's right to compensation.

An analogous situation to the one presented here occurred in *Paradise Land Co., et al. v. U. S.*, 212 Fed. 2d 170. There, it was found that erroneous maps had been used by the Trial Court in fixing compensation. These maps did not accurately reflect the area affected by the expropriation. It was held that the absence of an opportunity to prove compensation based on evidence affecting the land actually expropriated was fatal to the validity of the expropriation.

CONCLUSION.

For the foregoing reasons, petitioner prays that this writ of certiorari be granted.

Respectfully submitted,

EDWARD M. CARMOUCHE,
416 Pioneer Building,
Lake Charles, Louisiana,

SOLOMON S. GOLDMAN,
1320 Saratoga Building,
New Orleans 12, Louisiana,
Attorneys for Petitioner.

CERTIFICATE.

I hereby certify that copies of the above and foregoing petition have been mailed to opposing counsel this ... day of May, 1964.